

SAVAGE CONSTRUCTION CO., INC.

IBLA 83-785

Decided March 27, 1984

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring millsite claim null and void ab initio. N MC 104102.

Reversed.

1. Mining Claims: Lands Subject to -- Segregation -- State Selections

Where on appeal the Board determines that, in declaring a millsite claim null and void ab initio because it was located on land which had been patented to the state, BLM mistakenly fixed the situs of the claim and that the claim is actually on land open to entry, the Board will reverse the BLM decision.

APPEARANCES: Robert A. Grayson, Esq., Carson City, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Savage Construction Company, Inc., timely appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated June 3, 1983, amending a May 25, 1983, decision which declared the Cinder Lite millsite claim, N MC 104102, null and void ab initio.

Appellant's millsite claim was located May 19, 1958, and filed for recordation with BLM on October 5, 1979, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(a) (1980). Appellant's notice of location described the claim as situated in the NW 1/4 NW 1/4 sec. 4, T. 15 N., R. 20 E., Mount Diablo meridian, Ormsby County, Nevada. In its May 1983 decision, BLM declared the millsite claim null and void ab initio because the land had been "transferred out of Federal ownership prior to the location of your mining claims." ^{1/} By letter dated June 8, 1983, appellant inquired as to "when the particular property was allegedly transferred out of Federal ownership and to

^{1/} BLM incorrectly referred to appellant's millsite claim as a "mining" claim. See 30 U.S.C. § 42 (1976). In addition, BLM described the affected land as the W 1/2 sec. 4, T. 13 N., R. 19 E., Mount Diablo meridian, Nevada. In its June 1983 decision, BLM amended the May 1983 decision to refer to the NW 1/4 sec. 4, T. 15 N., R. 20 E., Mount Diablo meridian, Nevada, which had likewise been transferred out of Federal ownership prior to location of the claim.

whom or what entity the same was transferred." By letter dated June 13, 1983, BLM responded:

Enclosed is a master title plat from our office showing the location of the claim as shown on the map submitted to this office. The Cinder Lite claim, in T. 15N R. 20E Sec. 4, Lot 2 of the NW 1/4, is located on lands transferred out of federal ownership. This transfer took place when these lands became part of State Selection List number 9 which was signed by the Secretary of the Interior on August 8, 1890.

[1] In appellant's notice of location for the Cinder Lite millsite claim, filed with BLM, the claim was described as situated in the NW 1/4 NW 1/4 sec. 4, T. 15 N., R. 20 E., Mount Diablo meridian, Nevada. In addition, appellant submitted a map which depicted the location of the millsite claim within a square subdivided into four squares by lines running north-south and east-west. The claim is depicted as a rectangle in the top left square extending 330 feet west from the north-south center line and 660 feet south from the top of the square. It is apparent that BLM mistakenly believed that this map depicted sec. 4 and that appellant's millsite claim was located in the E 1/2 NE 1/4 NW 1/4 sec. 4. The master title plat for T. 15 N., R. 20 E., Mount Diablo meridian, Nevada, indeed indicates that such land was patented under State selection (SS) 9. Such land was not open to mineral entry. Ralph Memmott, 61 IBLA 116, 118 (1982). However, appellant's map actually depicts the NW 1/4 sec. 4. The map bears the handwritten heading "T. 15 N., R. 20 E., MDM, Nevada, sec. 4: NW 4." Moreover, the dimensions given for appellant's millsite claim correspond to the scale for a quarter section given on the map. Accordingly, we conclude that appellant's millsite claim is located within lot 2 of NW 1/4 sec. 4 2/ and is accurately described as the E 1/2 NE 1/4 NW 1/4 NW 1/4 sec. 4. The master title plat indicates that such land is not subject to SS 9 and was available for mineral entry at the time of location in May 1958. 3/ We conclude that BLM improperly declared appellant's millsite claim null and void ab initio.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Gail M. Frazier
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Franklin D. Arness
Administrative Judge

2/ Lot 2 covers the entire N 1/2 of the NW 1/4 sec. 4, T. 15 N., R. 20 E., Mount Diablo meridian, Nevada.

3/ The master title plat reflects that this land was segregated from mining location on Oct. 15, 1970.

